STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 18, 2008
v	No. 276764 Wayne Circuit Court
RAYFIELD BRAZEL, Defendant-Appellant.	LC No. 05-006212-01

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right from his convictions of first-degree fleeing and eluding a police officer, MCL 257.602a(5), operating a motor vehicle on a suspended license causing death, MCL 257.904(4), operating a vehicle while intoxicated causing death, MCL 257.625(4), and involuntary manslaughter, MCL 750.321. The trial court sentenced defendant to concurrent prison terms of 71 months to 15 years on each count. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant argues that the trial court improperly admitted medical records that indicated that his urine tested positive for cocaine metabolites. He argues that the evidence was inadmissible hearsay and was barred by the Confrontation Clause. US Const, Am VI. We disagree. We review for abuse of discretion a trial court's decision to admit evidence, but any preliminary questions of law regarding evidentiary matters are reviewed de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

The trial court did not abuse its discretion by admitting the medical records at issue because the records were admissible under the business records exception to the hearsay rule. According to MRE 803(6), the hearsay rule does not exclude:

> A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of

> information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In this case, the testimony of the records custodian established that defendant's medical records were kept in the regular course of the hospital's business, and no evidence suggests that the medical records are untrustworthy. Accordingly, those records were admissible as regularly kept business records of the hospital. The critical hearsay statement at issue was the positive result of defendant's urine test. Those tests were conducted in the course of the hospital's business by someone with knowledge, and the results were reduced to the record, which the record custodian verified. Therefore, the trial court did not abuse its discretion by admitting the medical records at issue. MRE 803(6).

Defendant argues that the medical records lack trustworthiness because they may have been prepared for use in litigation—the test may have been performed at the behest of police to obtain incriminating evidence against defendant. We disagree. It is true that the inherent trustworthiness of business records is undermined when the records are prepared in anticipation of litigation. *McDaniel*, *supra* at 414; *People v Jambor (On Remand)*, 273 Mich App 477, 482; 729 NW2d 569 (2007). However, defendant offers only speculation in support of his claim that the critical urine test could have been done at the behest of the police to obtain incriminating evidence against him. Defendant was transported to the hospital by ambulance after he crashed his vehicle. Therefore, the tests performed on defendant were most likely conducted to obtain information that the hospital would need in treating him. Accordingly, there is no reasonable basis to conclude that the medical records should have been excluded because of a lack of trustworthiness.

Finally, defendant argues that the admission of the urine test result violated the Confrontation Clause because it constituted testimonial evidence. However, this Court has held that a statement is not "testimonial" for Confrontation Clause purposes if none of the declarations were made to a government official, and there was "nothing to indicate that the statements were made with the intent to preserve evidence for later possible use in court." *People v Bauder*, 269 Mich App 174, 182; 712 NW2d 506 (2005). From all appearances, the tests were performed for the hospital's internal purposes, not at the behest of a government actor, and they do not appear to have been performed for the purpose of preserving evidence for use in court. Therefore, they are non-testimonial for purposes of the Confrontation Clause, and defendant has not shown that the admission of the urine test results violated his right to confrontation.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher